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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1431 200

BLUE CAB COMPANY AND VILLAGE CAB COMPANY,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioners, Blue Cab Company and Village Cab Company, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on February 7, 1967.

OPINIONS BELOW.

The opinion of the court of appeals is not yet officially reported, but is printed in Appendix A at pages 11-18. The Board's decision and order (J. A. 284-329)[1] is reported at 156 N. L. R. B. 489.

1. "J. A." refers to the joint appendix in the court below; copies have been filed with the petition.

JURISDICTION.

The judgment of the court of appeals was entered on February 7, 1967. Rehearing was denied on March 2, 1967. This Court has jurisdiction under 28 U. S. C. 1254 (1) and Sections 10 (e) and 10 (f) of the National Labor Relations Act (29 U. S. C. 160 (e) and (f)).

QUESTIONS PRESENTED.

Whether the National Labor Relations Board has the power to require the parties to a collective bargaining agreement to continue to give effect to the agreement after it has been terminated by the parties.

Whether it is a refusal to bargain collectively, in violation of Section 8 (a) (5) of the National Labor Relations Act, for an employer to change unilaterally the price charged the public for its goods or services when the compensation of its employees is based in part upon the employer's sales.

Whether the court of appeals erred in limiting its review of the National Labor Relation Board's finding as to the nature of the work stoppage to a determination of whether this finding was supported by substantial evidence.

STATUTE INVOLVED.

The relevant statutory provisions are set forth in Appendix B, *infra*, pp. 21-22.

STATEMENT.

The Blue Cab Company and Village Cab Company (hereinafter referred to as the "Companies") are in the business of operating taxicabs under franchises from the Village of Oak Park, a suburb of Chicago (J. A. 20). Both

Companies are run primarily by Charles Ugaste and both share common facilities and supervisory staffs at the same location (J. A. 7, 18, 20-21).

For eleven years the Companies had bargained with the Union[2] and the resulting collective bargaining agreements were substantially identical for each bargaining unit (J. A. 24). The most recent contracts were to remain in effect through June 30, 1963, and from year to year thereafter, unless at least 60 days prior to that date or any subsequent June 30, either party served written notice of its desire to amend or terminate the agreements (J. A. 297, 251-257, 258). On January 21, 1963, the Companies, by their attorneys, notified the Union in writing of their intent to terminate the agreements on June 30, 1963 (J. A. 290-291, 297-298, 29, 105-106, 260, 261). Prior to this time, Charles Ugaste had had many discussions with Mr. Baggot and other Union representatives as to the possibility of working out some arrangement other than that which was then in effect (J. A. 29, 38, 226). The Union did not respond to this notice until April 23 when it asked the Companies to begin negotiations (J. A. 262, 263). On April 29, the Companies replied (again through their attorneys) that although they considered the contracts terminated as of June 30, 1963, they would "be glad to discuss with [the Union], at any time or place that is mutually convenient, any phases of the working conditions and wages . . . which concern [the Union]." (J. A. 268.)

In the middle of May, Charles Ugaste met with John Baggot, business agent of the Union, at the latter's request (J. A. 31-32, 134). At this meeting, Ugaste stated that because he was losing money, he intended to cease operating taxicabs and begin to lease them (J. A.

2. General Teamsters, Chauffeurs and Helpers, Local Union No. 782, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

36, 107). Baggot's answer to this was that he heard the same claim every time he negotiated a contract (J. A. 134).

On May 27, 1963, the Union wrote the Federal Mediation and Conciliation Service, giving notice that it had an unresolved labor dispute with the Companies (J. A. 276; 120). On June 24, the Companies met with the Union under the auspices of the Federal Mediation and Conciliation Service, but their attendance was under protest as they contested the jurisdiction of federal agencies over the dispute (J. A. 299, 305; 74-75, 122-123).

After this meeting, the membership met and voted to go out on strike if no contract was signed by June 30th (J. A. 123).

The next meeting between the parties was arranged for by the Oak Park Chief of Police and took place at the Village Hall on June 28th (J. A. 124). At this meeting, Charles Ugaste proposed that the drivers take a reduction in their share of the fares to 42.5 percent and that they be required to secure a bond of one hundred dollars for accidents (J. A. 124). Ugaste also stated that the Companies planned to reduce the basic fare from 40 to 30 cents per mile (J. A. 124).

The following day, there was another meeting at the Village Hall, attended by some of the drivers. Mr. Ugaste repeated his offer of 42.5 percent, but the drivers at the meeting rejected it (J. A. 98-99). Instead, they offered to cut the drivers' share of the fares to 43.5 percent, with no change in the other benefits they were then receiving and no bonding requirement (J. A. 98-99). Mr. Ugaste rejected this proposal (J. A. 99).

At Midnight on June 30, 1963, the moment the contract expired, the drivers struck and began picketing. On July 1, the Companies began leasing the cabs and reduced the meter rate from 40 to 30 cents per mile, a reduction which

is still in effect (J. A. 51-52). That same day, the Companies and Ugaste made a signed written offer to the Union containing the terms demanded by the drivers at the meeting on June 29 (*i.e.*, a commission rate of 43.5 percent with no other change in the benefits), except for the requirement that drivers obtain a $100 bond (J. A. 278). This offer was tentatively accepted by the chief Union representative but was subsequently rejected by the drivers (J. A. 302, 239, 132).

On July 24, representatives of the Companies and the Union met. The drivers, through their attorneys, offered to return to work under the terms and conditions contained in the old collective bargaining agreement (J. A. 303; 81-82). The Companies refused to reinstate them on these terms. On September 9, the Union repeated the offer of July 24 to return to work (J. A. 279, 280). Again, the Companies refused to accept the offer (J. A. 281).

On the basis of the foregoing facts, the National Labor Relations Board (hereinafter referred to as the "Board") found that the totality of the Companies' conduct constituted a violation of Section 8 (a) (5) (J. A. 307-310). In addition, the Board found that the Companies violated Section 8 (a) (5) by unilaterally reducing the meter rates (J. A. 308), by unilaterally subcontracting the driving of the cabs to independent contractors (J. A. 308-309), and by terminating the current collective bargaining agreements without notifying the appropriate federal and state agencies (J. A. 304-306). The Board further found that the Companies violated Sections 8 (a) (3) and 8 (a) (1) of the Act by terminating the employment relationship of their commission drivers on July 1, 1963 with the specific intent of eliminating the Union as the bargaining representative and discouraging union membership (J. A. 326). Finally, the Board found that the Companies violated Section 8 (a) (1) of the Act by threats, promises of benefits, and

other acts of interference, restraint and coercion (J. A. 311-315).

The Board's order requires the Companies to cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Act (J. A. 319-321, 327-328). Affirmatively, the Board ordered the Companies to bargain in good faith with the Union; to "resume their taxicab operations as conducted prior to July 1, 1963" (J. A. 320); "to cancel all lease arrangements with drivers and to give effect to the contract which [they] sought to terminate until such time as said contract may lawfully be terminated . . . pursuant to the provisions of Section 8(d)" (J. A. 327-328); to offer reinstatement to the drivers with back pay (J. A. 320); and to post appropriate notices (J. A. 321; 329).

The Court of Appeals affirmed all of the Board's findings and enforced the Board's order in its entirety. On March 2, 1967, the court of appeals denied the Companies' petition for rehearing.

REASONS FOR GRANTING THE WRIT.

1. In enforcing that part of the Board's order requiring the Companies "to give effect to the contract which [they] sought to terminate until such time as said contract may lawfully be terminated . . . pursuant to the provisions of Section 8(d)" (J. A. 327-328), the decision of the court below in the instant case is in direct conflict with the decision of the Fifth Circuit Court of Appeals in *National Labor Relations Board* v. *Light Boat Storage, Inc.* (not yet officially reported), 64 L. R. R. M. 2457 (5th Cir. 1967), *modifying* 153 N. L. R. B. 1209 (1965).

In the *Light Boat Storage* case, the collective bargaining agreement terminated by its terms on March 1, 1965. The

notice required by Section 8(d) of the Act was never given (153 N. L. R. B. at 1219). Finding that the company had violated Section 8(a)(5) of the Act, the Board ordered it to "reactivate, acknowledge the validity of, and abide by the terms of the collective bargaining contract. . . ." (153 N. L. R. B. at 1222). The Fifth Circuit Court of Appeals refused to enforce this portion of the Board's order, stating:

> Ordering compliance with an expired contract is much like ordering a party to sign a contract upon which full agreement has not been reached. At the very least, such an order disregards the parties' agreement concerning the duration of their commitment. And it certainly cannot be presumed that in changing economic circumstances the parties would agree on an identical renewal contract. 64 L. R. R. M. 2462.

The facts on this point in the instant case are almost identical to those in the *Light Boat Storage* case. The contract was terminated *by its own terms,* pursuant to Article XXI (J. A. 257), by virtue of the Companies' written notification to the Union of their intent to terminate the agreements (J. A. 290-291, 297, 298, 29, 105-106, 260, 261) and by virtue of the Union's written notice of its desire to amend the Agreement (J. A. 262, 263). The fact that Section 8(d) was not complied with does not distinguish the instant case from the *Light Boat Storage* case, since there was no compliance with Section 8(d) there. See 153 N. L. R. B. at 1219. Moreover, it is well established that "the failure to give timely notice to federal and state agencies [does] not have the effect of extending the period of the expired contract." *Procter and Gamble Independent Union* v. *Procter and Gamble Manufacturing Company,* 312 F. 2d 181, 189 (2d Cir. 1962) *certiorari denied,* 374 U. S. 830 (1963). See also *United States Gypsum Co.,* 90 N. L. R. B. 964, 968 n. 11 (1950); *International Harvester Company,* 77 N. L. R. B. 242, 243 (1948).

The issue of the Board's power to order the parties to a collective bargaining agreement to continue to give effect to it after they have terminated it raises important problems of a statutory and even constitutional dimension since such an order imposes an involuntary agreement upon the parties. See *In re Eisner*, 191 Misc. 662, 666, 77 N. Y. S. 2d 676, 679 (1948), *appeal dismissed*, 84 N. Y. S. 2d 698 (1948). Moreover, as the Court of Appeals for the Fifth Circuit observed, "the cases dealing with the employer's duty to take affirmative action to remedy his prior violation of Section 8(a)(5) have not been at all consistent." 64 L. R. R. M. 2462.

2. The Board's finding that the Companies violated Section 8(a)(5) of the Act by unilaterally reducing meter rates from forty to thirty cents per mile constitutes an unprecedented and unwarranted intrusion by the Board into an area—pricing policies—traditionally reserved to management and clearly outside the scope of matters committed by law to collective bargaining. To force taxi companies to bargain with their drivers as to the rates to be charged to customers is no different than forcing insurance companies to bargain with their commission agents as to the amount of life insurance premiums. Like the type of product to be produced or the location of plants, price policies have been universally understood to be within the exclusive control of management. See Cox and Dunlop, "Regulation of Collective Bargaining by the National Labor Relations Board," 63 *Harv. L. Rev.* 389, 401 (1950).

While decisions with respect to pricing policies have an important impact on employees whose pay is in part calculated on a commission basis, so do:

> Decisions concerning the volume and kind of advertising expenditures, product design, the manner of financing, and sales . . . . Yet it is hardly conceivable that such decisions so involve "conditions of employment"

that they must be negotiated with the employees' bargaining representative.[3] *Fibreboard Paper Products Corp.* v. *N. L. R. B.*, 379 U. S. 203 at 223 (1964). (Concurring opinion of Mr. Justice Stewart.)

Neither the Labor Board nor the court below has cited any cases in which a unilateral change in the price of the goods sold has been held to violate Section 8(a)(5).

This finding of the Board is of considerable practical importance both to the Petitioners and to employers generally, for the Trial Examiner's order, adopted on this point by the Board, directed the Companies to cease and desist "from making unilateral changes in the terms and conditions of employment without consulting the designated bargaining agent." (J. A. 316.) Therefore, unless the Board's finding on this point is reversed, the Companies will be forced to bargain with the Union about all future changes in meter rates. Moreover, in ordering the Companies to "resume their taxicab operations as conducted prior to July 1, 1963" (J. A. 320), the Board would seem to be ordering the Companies to increase meter rates back to the 40 cent level. It is no exaggeration to say that this constitutes a kind of price control totally without foundation in the Act. Unless reversed, a most dangerous precedent would be established.

3. The court of appeals' enforcement of the Board's order requiring that certain individuals be reinstated and made whole for any loss of pay rested upon its affirmance of the Board's finding that these individuals were constructively discharged, an affirmance that was based upon a determination that the Board's finding was supported by substantial evidence. It is believed that the affirmance on this basis was erroneous since the question of the status of

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3. It would seem that the decision concerning meter rates is a "sales" decision since it involves the price of the single service which the Companies have been marketing.

these individuals after the inception of the work stoppage could be resolved only by reference to appropriate legal principles. There was little, if any, dispute as to the facts. Rather, the sole issue presented was whether, given these facts, the Board's ascription of a particular legal status to the individuals involved was correct. It is believed that the substantial evidence test is not the proper basis for the resolution of this question since the question is one of "law" rather than "fact." See Jaffe, *Judicial Control of Administrative Action*, 548 (1965).

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

THE UNITED STATES COURT OF APPEALS
for the
District of Columbia Circuit.

No. 20110.

GENERAL TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 782, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*,

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 20148.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

vs.

BLUE CAB COMPANY AND VILLAGE CAB COMPANY, *Respondents*.

No. 20253.

BLUE CAB COMPANY AND VILLAGE CAB COMPANY, *Petitioners*,

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

ON PETITIONS TO REVIEW AND ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

February 7, 1967.

Sheldon M. Charone, with whom *Herbert S. Thatcher* was on the brief, for petitioner in No. 20110 and intervenor in No. 20148. *David S. Barr* also entered an appearance for intervenor in No. 20148.

Hans J. Lehmann, with whom *Arnold Ordman,* General Counsel, *Dominick L. Manoli,* Associate General Counsel, *Marcel Mallet-Prevost,* Assistant General Counsel, and *Elliott Moore,* were on the brief for petitioner in No. 20148 and respondent in Nos. 20110 and 20253.

Richard L. Marcus, with whom *Charles L. Bucy* was on the brief, for petitioners in No. 20253 and respondents in No. 20148.

Before PRETTYMAN, *Senior Circuit Judge* and TAMM and ROBINSON, *Circuit Judges.*

TAMM, *Circuit Judge*:—These are three labor relations cases. The National Labor Relations Board, after proper proceedings, held that the Blue Cab Company and the Village Cab Company had violated Sections 8 (a)(1), (3) and (5) of the National Labor Relations Act.[1]

In case No. 20,110, the Union, General Teamsters, Chauffeurs and Helpers, Chauffeurs, Warehousemen and Helpers of America, seeks reversal of the Board's action on several grounds. The Union alleges that the Board erred in its refusal to permit an inspection of the employers' financial records and in its ruling that it was unnecessary to decide whether the employers had refused to bargain with respect to severance pay and a demand for a drivers' damage bond.

In case No. 20,253, Blue Cab Company and Village Cab Company, the employers in the labor dispute, challenge the correctness of the Board's rulings that they the employers:

---

1. National Labor Relations Act, as amended, 61 Stat. 136, 13 Stat. 519, 29 U. S. C. § 158(a)(1), (3), (5). See Appendix.

1. Violated Section 8(a)(1) of the Act by threatening employees with reprisals and promising them benefits to induce them to abandon representation by the Union.

2. Violated Sections 8(a)(1), (3) and (5) of the Act by discharging their driver-employees and thereafter requiring drivers to execute a lease agreement, purportedly as independent contractors, in order to avoid bargaining with the Union.

3. Further violated Sections 8(a)(1) and (5) of the Act by reducing employees' compensation; by introducing a different system of payments without notifying and consulting with the Union; and by terminating its collective bargaining agreement without notifying federal and state agencies, as required by Sections 8(d) (3) and (4) of the Act.

The companies also challenge, generally, the validity and propriety of the Board's order.

In case No. 20,148 the National Labor Relations Board petitions for enforcement of its order which, in substance, calls upon the Blue Cab and Village Cab companies to cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Act. The Board's order further requires the cab companies to bargain in good faith with the Union; to resume taxicab operations as they were conducted prior to July 1, 1963 (the date of the termination of the prior labor contract); to cancel lease arrangements made with drivers; to reinstate, and to continue to operate under the terms of, the labor agreements in effect on June 30, 1963, until such time as they may be lawfully terminated pursuant to the provision of Section 8(d) of the Act; to offer reinstatement to discharged drivers, with back pay; and to post appropriate notices.

II. The Board had before it as the basis for its decision a great volume of evidence. The trial examiner had heard the testimony of more than twenty witnesses, and this transcribed testimony produced a record exceeding seven hundred pages. A number of exhibits supplemented the oral testimony. Our careful review of the entire record and the Board's order convinces us that the Board's decision is supported by substantial evidence on the record considered as a whole and that the relevant evidence was such that a reasonable mind might accept it as adequate to support the Board's conclusions. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142 (1937); *Consolidated Edison Co. et al.* v. *National Labor Relations Board,* 305 U. S. 197 (1938).

Additionally, the proceedings before the examiner and the Board fulfilled all procedural requirements. The Board accepted with some modification the examiner's findings, conclusions, and recommendations. In those instances where its conclusions differ from those of the examiner, we are satisfied that they were proper and within the orbit of the Board's authority to reach differing conclusions from those of the hearing examiner. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, 492. Four Board members as "experts devoting their whole skill in labor management problems, unanimously and realistically considered the entire record"[2] and in their dutiful administration of the Act reached their decision accordingly.

This court must give appropriate consideration to the broad expertise of the Board:

> "Everyday experience in the administration of the statute gives if familiarity with the circumstances and

2. *Warehousemen and Mail Order Employees Local No. 743* v. *National Labor Relations Board,* 112 U. S. App. D. C. 280, 302 F. 2d 865, 869 (1962).

backgrounds of employment relationship in various industries, with the abilities and needs of the workers for self-organization and collective action, and with the adaptability of collective bargaining for the peaceful settlement of their disputes with their employers." *National Labor Relations Board* v. *Hearst Publications Inc.*, 322 U. S. 111, 130 (1944).

Our reviewing power is further restricted:

"We have repeatedly held that Congress, by providing [in] § 10(c) (e) and (f) of the National Labor Relations Act, that the Board's findings 'as to the facts, if supported by the evidence, shall be conclusive,' precludes the courts from weighing evidence in reviewing the Board's orders, and if the findings of the Board are supported by evidence, the courts are not free to set them aside, even though the Board could have drawn different inferences." *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105 (1942).

This limitation on and of court review of decisions of administrative agencies has been reviewed, restated, and re-emphasized by the Supreme Court during the past year. See *Consolo* v. *Federal Maritime Commission*, 383 U. S. 607, 623 (1966).

Since we find that the Board's action is supported by substantial evidence and since the record is completely devoid of any indication of arbitrary or capricious conduct and reflects no abuse of discretion, we affirm the Board's action in its entirety. The petitions for review are denied. The Board's order will be enforced in full.

It is so orderd.

§ 158. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same

terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(5) to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 159(a) of this title.

DECREE.

Before: PRETTYMAN, *Senior Circuit Judge,* TAMM and ROBINSON, *Circuit Judges.*

THESE CAUSES were submitted to this Court upon petitions to review, and a petition for enforcement of an order of the National Labor Relations Board, dated December 30, 1965, against Blue Cab Company and Village Cab Company, their officers, agents, successors, and assigns. The Court heard argument of respective counsel on December 23, 1966, and has considered the briefs and transcript of record filed in these causes. On February 7, 1967, the Court being fully advised in the premises, handed down its opinion denying the petitions to review and granting enforcement of the Board's order and entered judgment accordingly.

On consideration whereof, it is ORDERED, ADJUDGED and DECREED by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that Blue Cab Company and Village Cab Company, their officers, agents, successors, and assigns

abide by and perform the directions of the Board in said order contained.

.....,

Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit.

.....,

Circuit Judge, United States Court of Appeals for the District of Columbia Circuit.

.....,

Circuit Judge, United States Court of Appeals for the District of Columbia Circuit.

UNITED STATES COURT OF APPEALS,
for the District of Columbia Circuit.

SEPTEMBER TERM, 1966.

No. 20148.

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

BLUE CAB COMPANY AND VILLAGE CAB COMPANY, *Respondents.*

GENERAL TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 782, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA. *Intervenor,*

No. 20253.

BLUE CAB COMPANY AND VILLAGE CAB COMPANY, *Petitioners,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

Before: PRETTYMAN, *Senior Circuit Judge*; and TAMM and ROBINSON, *Circuit Judges,* in Chambers.

ORDER.

On consideration of the petition for rehearing filed by Blue Cab Company and Village Cab Company, it is

ORDERED by the court that the aforesaid petition is denied.

PER CURIAM.

DECREE.

Before: PRETTYMAN, *Senior Circuit Judge,* TAMM and ROBINSON, *Circuit Judges.*

THESE CAUSES were submitted to this Court upon petitions to review, and a petition for enforcement of an order of the National Labor Relations Board, dated December 30, 1965, against Blue Cab Company and Village Cab Company, their officers, agents, successors, and assigns. The Court heard argument of respective counsel on December 23, 1966, and has considered the briefs and transcript of record filed in these causes. On February 7, 1967, the Court being fully advised in the premises, handed down its opinion denying the petitions to review and granting enforcement of the Board's order and entered judgment accordingly.

On consideration whereof, it is ORDERED, ADJUDGED and DECREED by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that Blue Cab Company and Village Cab Company, their officers, agents, successors, and assigns abide by and perform the directions of the Board in said order contained.

/s/ E. BARRETT PRETTYMAN,
Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit.

/s/ EDWARD ALLEN TAMM,
Circuit Judge, United States Court of Appeals for the District of Columbia Circuit.

/s/ SPOTTSWOOD W. ROBINSON, III,
Circuit Judge, United States Court of Appeals for the District of Columbia Circuit.

APPENDIX B.

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*) are as follows:

29 U. S. C. § 158 (a) (1), (3), (5):

"Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization . . .;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

29 U. S. C. § 158 (d):

"Sec. 158 (d) For the purposes of this section, to bargain collectively in the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Concilation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

* * * * *

Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer."